IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11630 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RADHESHYAM JAYNARAYAN TULSIAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11630 of 2004

MRS KETTY A MEHTA for Petitioner No. 1-9

GOVERNMENT PLEADER for Respondent No. 1

MR PRASHANT G DESAI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 24/01/2005

ORAL JUDGEMENT

Rule. Shri Sud, Learned AGP waives service of rule on behalf of the respondent no.1. Shri P.G.Desai, Learned Advocate waives service of rule on behalf of the respondent no.2. With the consent of the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226 of the Constitution of India, the petitioners had challenged the circular dated 13.8.2003 issued by the Commissioner, Surat Municipal Corporation by which the Commissioner,

Surat Municipal Corporation has issued circular with regard to the licence fee for putting up signboards, hoardings etc. Another prayer is also with regard to the declaration that the advertisement placed by the petitioner on their property relating to their trade and business is not covered by the provision of Section 245 of the BPMC Act, 1949 and also by circular dated 13.8.2003. A further prayer is for an appropriate writ, direction and order directing the respondent no.2 not to implement or enforce or in any way compel the petitioners to follow the provisions of the Circular dated 13.8.2003 issued by the Commissioner, Surat Municipal Corporation.

3. Apart from the fact that number of contentions are raised and number of submissions are made with regard to applicability of Section 245 of the BPMC Act as well as the circular dated 13.8.2003, Mrs. K.A.Mehta, Learned Advocate appearing for the petitioners had submitted that even the impugned action of the respondent no.2 Corporation in trying to remove the hoardings/signboards etc. which are there on the building in question is in breach of principles of natural justice, inasmuch as, no notice is issued upon the petitioners calling upon the petitioner to remove the said signboards/hoards etc. Without going into the larger question on merits with regard to applicability of Section 245 of the BPMC Act as well as circular dated 13.8.2003, in view of the fact that the impugned action is in violation of the principles of natural justice, inasmuch as, the petitioners are not given an opportunity of being heard before proposing to remove the hoardings/signboards etc. from the property in question, this Court proposes to dispose of the present petition only on that ground. Accordingly, the petition succeeds to the extent stated hereinabove and the proposed action of the respondent no.2 in trying to remove the boardings/signboards etc. from the property in question i.e. Radhe Market and Jai Radhe Market is hereby quashed and set aside only on the ground that the same is in breach of the principles of natural justice and the petitioners and/or affected persons are not given an opportunity of being heard. It will be open for the respondents to take appropriate action in accordance with law and on merits with regard to the removal of the hoardings/signboards etc. which are there on the aforesaid two buildings and also with regard to licence fee after giving an opportunity to the petitioners and if the order is against the petitioners. It will be open for the petitioners to take all the contentions which are available to them under the law which are also raised in the present petition inclusive of the applicability of Section 245 of the BPMC Act as

well as applicability of the circular dated 13.8.2003 and the respondent no.2 may consider the same and pass a speaking order and communicate the outcome of the same to the petitioners and/or concerned affected parties. It is, however, directed that until the aforesaid decision is communicated to the petitioners and/or affected parties and for a further period of 15 days from the date of communication of the said decision, adinterim relief granted earlier on 13.9.2004 is directed to be continued. Rule is made absolute.

(M.R.Shah, J)

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